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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 331

F. J. LEWIS,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ETC., AND FRANK C. LEVITON,

Respondents.

PETITION OF F. J. LEWIS FOR WRIT OF CERTIORARI

AND

MOTION TO CONSOLIDATE WITH THE PEOPLE, EX REL. RECONSTRUCTION FINANCE CORPORATION vs. BOARD OF EDUCATION OF THE CITY OF CHICAGO.

FLOYD E. THOMPSON,
ALBERT E. JENNER, JR.,
11 South La Salle Street,
Chicago, Illinois,
Attorneys for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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To The Honorable The Supreme Court of the United States:

F. J. LEWIS, a judgment creditor of the Board of Education of the City of Chicago, Illinois, and intervening defendant in an injunction proceeding commenced in the Circuit Court of Cook County, Illinois, by taxpayers against said Board of Education, respectfully prays that a writ of certiorari issue to the Supreme Court of Illinois directing that Court to certify to this Court the record in

the case of *Frank C. Leviton* v. *Board of Education of the City of Chicago, et al.*, No. 27496 in that Court, in order that the decision and judgment of said Court, rendered March 22, 1944, may be reviewed by this Court, and the judgment reversed.

Summary Statement of Matter Involved.

April 1, 1939, F. J. Lewis obtained in the Circuit Court of Cook County, Illinois, a money decree against the Board of Education of the City of Chicago, Illinois, in the sum of $73,371.60, in a suit for accounting for his share of the proceeds of collections of 1929 taxes anticipated, assigned and pledged to him and other tax anticipation warrant holders by said Board of Education, which the Board received in its treasury in due course from the collecting officers pursuant to the statutes of Illinois, and which the petitioner contended and the Court held the Board was under contract to set apart, hold and pay over to Lewis and other 1929 tax anticipation warrant holders. (R. 46-50.) His decree is in all respects, except as to amount, like the decrees of the Reconstruction Finance Corporation and the other 210 petitioners in *The People, etc., ex rel. Reconstruction Finance Corporation, et al.* v. *Board of Education, et al.* (R. 8-9, 17-45) this day filed, and like the decree entered for another warrant holder in the District Court of the United States for the Northern District of Illinois in *Norfolk & Western Ry. Co.* v. *Board of Education*, 14 Fed. Supp. 475, and affirmed in 88 Fed. (2nd) 462. (R. 9.)

September 15, 1939, the Board of Education, by resolution, authorized the issuance and sale of $80,000 in judgment funding bonds to provide funds to pay the Lewis decree, under the authority granted by the Act of July 12, 1937, which authorized said Board to issue bonds to

pay judgment indebtedness. (R. 10-12, 79-80.) November 16, 1939, Frank C. Leviton, in his own behalf and in behalf of other taxpayers, brought his suit in equity in the Circuit Court of Cook County, Illinois, seeking an injunction restraining the Board from issuing and selling said judgment funding bonds on the ground that the Lewis claim was not a corporate obligation of the Board. (R. 1-15.) The motion of the Board to strike the complaint on the ground that it did not state a cause of action was sustained by the Circuit Court, (R. 50-51,) but the Supreme Court reversed. (R. 51.) See *Leviton* v. *Board of Education*, 374 Ill. 594; 30 N. E. (2d) 497. (App. Pet. in *People* v. *Board*, pp. 1-11.)

When the cause was redocketed in the Circuit Court, Lewis intervened (R. 51-57) and answered the complaint. (R. 57-67.) After a hearing, a decree awarding the writ of injunction was entered. (R. 93-94.) Lewis appealed from this decree on the ground that the decree entered in his accounting suit was conclusive of the liability of the Board, that it had become final and was not reviewable, that the decree fixed his rights and the Board's duties, that the decree awarding the injunction amounted to a vacation of the decree in the accounting suit, and that he was deprived of his property without due process of law, in violation of Section 1 of Amendment XIV of the Constitution of the United States. The Board appealed from the decree in the injunction proceeding on the ground that it did not hold void the decree entered against it in the accounting suit and that it was entitled to have that question determined. (R. 238, 242.) The Supreme Court declined to pass on the validity of the Lewis decree, (R. 244,) but held, on the authority of *Leviton* v. *Board of Education*, 374 Ill. 594, that the decree for accounting could not be enforced against the Board. (R.

242.) The injunction decree of the Circuit Court was affirmed. (R. 237-246.) See *Leviton* v. *Board of Education*, 385 Ill. 599, 53 N. E. (2nd) 596.

Statement of Jurisdictional Grounds.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code. (28 U. S. C., Sec. 344(b).) This cause originated in the Circuit Court of Cook County, Illinois, and was reviewed on appeal by the Supreme Court of Illinois. The Circuit Court filed no opinion. The opinion of the Supreme Court was filed and judgment was entered January 20, 1944, (R. 237, 245,) but a petition for rehearing was filed (R. 246) and it was denied and the judgment became final March 22, 1944. (R. 286.) Upon motion, an order was entered by this Court enlarging the time for filing this petition to August 9, 1944, to coordinate the filing of the petition in this case with the companion cases. (R. 292-293.) The opinion of the Supreme Court of Illinois appears at pages 237 to 244 of the record and is reported at 385 Ill. 599, 53 N. E. (2d) 596.

This Court has jurisdiction of this case on the following grounds:

(1) The petitioner's decree is property within the protection of the Fourteenth Amendment. The result of the decision of the Supreme Court of Illinois is to take Lewis' property and give it to the Board of Education and to others.

(2) The decree entered in the accounting suit in favor of Louis and against the Board of Education was entered by a court of competent jurisdiction, is final and unimpeachable, and is immune from collateral attack in this injunction proceeding. The Supreme Court of Illinois usurped judicial power and invaded the property rights

of this petitioner in his decree when it denied the conclusive effect of the decree, went behind the decree and re-examined issues settled thereby, and held that the claim upon which the decree was entered was not a valid claim against the Board. As a consequence, Lewis is deprived of his property without due process of law, as guaranteed by the Fourteenth Amendment.

(3) An integral part of every valid decree is the right to have it enforced. Lewis had a vested right to have the Board of Education free to take whatever means was available to it to provide for the payment of his decree. The issuance of the injunction restraining the Board from taking such steps, took from Lewis his right to have his decree against the Board enforced, destroyed the value of petitioner's property rights in his decree, and deprived him of his property without due process of law, and denied to him the equal protection of the laws, as guaranteed by the Fourteenth Amendment.

(4) The Court, by restraining the Board from discharging its obligation to Lewis under his decree, has denied to Lewis the advantages of and redress afforded by the principles of law, the presumptions and the remedies which have heretofore been afforded to all other litigants in like circumstances and having claims substantially identical with those of Lewis, and as a consequence has denied to Lewis the equal protection of the law guaranteed him by the Fourteenth Amendment.

(5) The non-federal grounds of the decision advanced by the Supreme Court of Illinois are unfounded, unsubstantial and not of sufficient breadth to sustain the judgment without a decision of the federal constitutional questions presented.

The result of the decision and judgment of the Supreme Court of Illinois is to deny to Lewis his rights under the Fourteenth Amendment to the Constitution of the

United States claimed and asserted at every available opportunity. The value of his decree has been destroyed and he has been deprived of his property without due process of law and denied the equal protection of the law in violation of the Fourteenth Amendment.

Statement of When and How the Jurisdictional Questions Were Raised and What Disposition Was Made of Them.

Petitioner, F. J. Lewis, was not a party to the original proceeding for injunction in the Circuit Court (R. 1-2) nor to the appeal from the order dismissing the complaint. (R. 237-238.) When the Supreme Court filed its opinion upon the appeal of the plaintiff from the order dismissing the complaint, holding that the complaint stated a cause of action, it used language which cast a cloud upon the Lewis decree. (*Leriton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2d) 497; App. Pet. in *People* v. *Board*, pp. 1-11.) When the case was redocketed in the Circuit Court after remandment, Lewis intervened and filed his answer. (R. 57.) He averred that his decree entered in the accounting suit against the Board of Education was a valid and subsisting corporate obligation of the Board and that it conclusively determined that the Board held property which it had received to his use and which belonged to him and to no one else; (R. 57-67;) and that to restrain the Board from issuing judgment funding bonds authorized by statute for the purpose of providing the means to pay his decree or from taking other steps available to it under the law to discharge its obligation to him, would deprive him of his property without due process of law in violation of Section 1 of Amendment XIV of the Constitution of the United States. (R. 60.) The Circuit Court considered that it was bound by the dicta in the opinion filed by the Supreme Court on the first appeal and awarded the writ of injunction as prayed. (R. 93-94.)

On his appeal to the Supreme Court of Illinois petitioner in his printed brief assigned as error* and fully argued that the judgment of the Circuit Court deprived him of his property without due process of law contrary to Section 1 of Amendment XIV of the Constitution of the United States. The following points were made:

(a) The decree of the Circuit Court in the injunction proceeding amounted to a vacation of petitioner's decree in his accounting suit. The Court was without jurisdiction in the injunction proceeding to vacate or modify the accounting decree after that decree became final and by its usurpation of judicial power it deprived Lewis of his property without due process of law. (Brief, pp. 26, 71-73; Reply Brief, p. 4.)

(b) The decree of the Circuit Court in the injunction proceeding deprived Lewis of all means available to him of enforcing his decree for accounting and destroyed the value of his decree and deprived him of his property in his decree without due process of law. (Brief, pp. 26, 32, 71-73.)

(c) The decree entered in the accounting suit was conclusive of all questions within the issues of that suit and the Circuit Court usurped judicial power in the injunction proceeding when it went behind the decree in the accounting suit and reconsidered the questions finally determined by it. As a consequence, Lewis was deprived of his property in his decree without due process of law. (Brief, pp. 29, 52-71; Reply Brief, pp. 7-26.)

(d) In holding, in effect, that Lewis' rights were adjudicated by the judgment of the Supreme Court on the first appeal, to which Lewis was not a party

* The briefs filed by the parties in the Supreme Court of Illinois have been certified to this Court. The practice of making formal assignments of error on the record on appeal does not obtain in Illinois. Instead, the grounds of appeal and questions sought to be raised on appeal are required to be set forth clearly in the briefs of the parties. It is sufficient if the grounds upon which an appellant seeks to reverse the judgment below appear from an examination of the entire brief. *Swain* v. *Hoberg*, 380 Ill. 442, 44 N. E. (2d) 38.

and in which he was not represented, the Circuit Court deprived Lewis of his day in court. (Brief, p. 33; Reply Brief, p. 6.)

After the decision of the Supreme Court affirming the decree of the Circuit Court, Lewis filed his petition for rehearing and pointed out in detail his claims that rights guaranteed to him under Amendment XIV of the Constitution of the United States had been denied to him, but this petition was denied without opinion. The petition directed the attention of the Court particularly to the following:

(a) Petitioner was denied his day in court and due process of law by the failure or refusal of the Court to pass upon the validity of the money decree held by him. (R. 257-260, 281.)

(b) Petitioner was denied due process of law by the application to his decree of the decision on the first appeal, which was litigation between the municipal corporation and its taxpayers, the interests of both being adverse to the interests of Lewis who was not a party to or represented by any party to said litigation. (R. 277-278.)

(c) The refusal of the Supreme Court to give to the Lewis decree the conclusive effect to which it was entitled and permitting a retrial of settled issues, destroyed the property rights of Lewis in his decree and deprived him of his property without due process. (R. 263-264, 281.)

(d) The Supreme Court attributed to Lewis concessions and contentions he never made, refused to decide the case presented by the pleadings and the briefs of the parties, and decided an assumed case not supported by the record, and, as a consequence, denied Lewis his day in court. (R. 267-272, 281.)

(e) By going behind the decree entered in favor of Lewis and against the Board in the accounting suit, and holding that the Board was under no duty to account to Lewis for money belonging to him and to

no one else and received by the Board to his use, the Supreme Court in effect held that the Board was the owner of Lewis' property and took his property from him and gave it to the Board without due process. (R. 252, 281.)

(f) By going behind the decree ordering the Board to account, and holding that the Board could defend against the demand for accounting by showing that it had disbursed to others the moneys of Lewis received by the Board to his use, the Supreme Court held in effect that the Board could give the property of Lewis to others. As a consequence, the judgment of the Supreme Court took property from Lewis and gave it to the others to whom the Board had paid moneys belonging to Lewis. (R. 255-256, 281.)

(g) By denying to Lewis the benefit and protection and advantages of principles of law accorded other litigants in the same place and under like circumstances rendering judgments immune from collateral attack, and by denying to Lewis the means for payment of his judgment, afforded to other judgment creditors of the Board of Education under like circumstances substantially identical with those occupied by Lewis, the Supreme Court of Illinois denied him the equal protection of the law. (R. 272-276.)

The Questions Presented.

The following questions arise upon the record and are in issue:

1. Did the Supreme Court of Illinois fail or refuse to decide federal constitutional questions presented, and are the non-federal grounds of decision advanced by that Court untenable or unsubstantial or not of sufficient breadth to sustain the judgment without a decision of the federal questions?

2. Is the decree entered in favor of Lewis against the Board of Education in his accounting suit property pro-

tected by the Fourteenth Amendment of the Constitution of the United States?

3. Has the judgment of the Supreme Court of Illinois, which does not hold Lewis' decree void but holds it to be unenforceable against the Board, plainly resulted in a denial to Lewis of the rights guaranteed to him by the Fourteenth Amendment?

4. Did the Supreme Court of Illinois, by holding that Lewis in his accounting suit sued on his tax anticipation warrants and sought to require the Board of Education to pay such tax anticipation warrants in whole or in part, from sources other than the anticipated taxes, thereby stating a case within *Berman* v. *Board of Education*, 360 Ill. 535, 196 N. E. 464, notwithstanding his complaint and the findings in the decree for accounting that Lewis' suit for accounting was for assigned and pledged tax moneys actually received into the treasury of the Board to the use of Lewis, state and decide a case not before that Court and thereby usurp judicial powers and deprive Lewis of his property in his decree for accounting without due process of law?

5. Did the Supreme Court of Illinois go behind the decree in the accounting suit and reconsider the questions conclusively determined by said decree and decide, because of what it regarded as lack of merit in the claim on which the decree was entered, that the decree should never have been entered, thereby usurping judicial power and destroying the vested rights of Lewis in his decree without due process of law and denying to him the equal protection of the law?

6. Has the Supreme Court of Illinois, by its restraining the Board of Education from paying its obligation fixed by the decree for accounting, thereby taking from Lewis all available remedies to compel payment of his decree, de-

prived him of his property in his decree without due process of law and denied to him the equal protection of the law?

7. Did the Supreme Court of Illinois, by its judgment, the effect of which was to release the Board of Education of its obligation to pay the decree obtained by Lewis against the Board in his accounting suit, take the property of Lewis and give it to the Board or to those to whom the Board had paid his money and thereby deprive him of his property without due process of law?

Reasons for Allowance of the Writ.

The reasons for the granting of the petition for writ of certiorari in this case are the same as the reasons for granting the petition in *People ex rel. Reconstruction Finance Corporation* v. *Board of Education of the City of Chicago*, this day filed, and we adopt what is said in the petition in that case (pp. 12-18) and in the brief in support of that petition. (pp. 19-52.) We point out, however, some reasons for allowance of this writ peculiarly applicable to this case.

The Supreme Court of Illinois, in this case, refused to apply the established law, that a final decree duly entered against a municipal corporation or a quasi-municipal corporation by a court of competent jurisdiction is conclusive of all questions within the issues and is a corporate obligation, and has affirmed the decree of the Circuit Court which enjoined the Board of Education from issuing judgment funding bonds, pursuant to usual and statutory authority, to pay the Lewis decree. By its judgment, the Supreme Court of Illinois took from Lewis all remedies for enforcing his decree for accounting, destroyed the value of the decree, and deprived him of his property without due process of law, in violation of the Fourteenth Amendment. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S.

421, 431; *United States* v. *New Orleans*, 98 U. S. 381, 395; *Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721; *Harshman* v. *Knox County*, 122 U. S. 306, 318; *District of Columbia* v. *Eslin*, 183 U. S. 62, 65; *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 682; *Com'rs. of Sinking Fund* v. *Philadelphia*, 324 Pa. 129, 188 Atl. 314, 316-318.

When the rights of Lewis for an accounting by the Board of Education were determined by the Circuit Court of Cook County, Illinois, in his accounting suit and passed into a decree, these rights became absolute and the validity of Lewis' claim against the Board could not be re-examined in a collateral proceeding. By going behind the decree in the accounting suit and deciding that the Board was under no obligation to account to Lewis for the proceeds of collections of taxes against which Lewis' warrants were issued, which were actually received by said Board to his use, the Supreme Court of Illinois has held in effect that the Board owns these funds and it has permitted the Board to convert Lewis' money to its own use or to the use of those to whom it has disbursed the money. This is a clear case of depriving Lewis of his property without due process of law. *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 80; *Panhandle Co.* v. *State Highway Com.*, 294 U. S. 613, 618; *C., St. P., M. & O. Ry. Co.* v. *Holmberg*, 282 U. S. 162, 167; *Ward* v. *Love County*, 253 U. S. 17, 24; *Ochoa* v. *Hernandez*, 230 U. S. 139, 161; *Missouri Pacific Ry. Co.* v. *Nebraska*, 164 U. S. 403, 417.

The decree for accounting in favor of Lewis against the Board of Education was entered April 1, 1939, and it became final thirty days thereafter. (Ill. Stat. 1943, Chap. 77, Par. 82.) No appeal was taken and all right to review this decree by appeal expired April 1, 1940. (Ill. Stat. 1943, Chap. 110, Par. 200.) When the Supreme Court of Illinois permitted this decree to be collaterally attacked in this injunction proceeding and went behind the decree and de-

termined that it should never have been entered against the Board because of the character of Lewis' claim, it usurped judicial authority, destroyed the vested rights of Lewis in his decree for accounting, and deprived him of his property without due process of law. *Voorhees* v. *Bank of United States*, 35 U. S. 449, 473; *Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721; *Buckmaster* v. *Jackson*, 4 Ill. 104, 107, 110, 111; *Harmon* v. *Auditor of Public Accounts*, 123 Ill. 122, 135, 13 N. E. 161, 165; *Knaus* v. *Chicago Title & Trust Co.*, 365 Ill. 588, 591, 7 N. E. (2nd) 298, 300.

The Supreme Court of Illinois did not mention directly or inferentially *Harmon* v. *Auditor of Public Accounts*, 123 Ill. 122, 133, 13 N. E. 161, 164, *Carney* v. *Village of Marseilles*, 136 Ill. 401, 407, 26 N. E. 491, 493, *O'Connor* v. *Board of Trustees*, 247 Ill. 54, 57-59, 93 N. E. 124, 125, and its many other decisions cited in the briefs of this petitioner, holding that the decree in the accounting suit was conclusive of every question within the issues of that suit, that the decree could not be collaterally impeached, that the decree was a corporate obligation of the Board of Education, and that the Board could not escape making provision for its payment, and arbitrarily refused to this petitioner the advantages of and redress afforded by the principles of law, the presumptions and the remedies which had theretofore been afforded to all litigants in like circumstances and having claims substantially identical with those of this petitioner, and so it has denied him the equal protection of the law, in violation of Section 1 of Amendment XIV of the Constitution of the United States. *Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Truax* v. *Corrigan*, 257 U. S. 312, 333-336; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 559; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 374; *Barbier* v. *Connolly*, 113 U. S. 27, 31.

It appears from the opinion of the Supreme Court of Illinois that it regards the judgment entered by it on the

first appeal in *Leviton* v. *Board of Education*, 374 Ill. 594, as binding on this judgment creditor and as an adjudication that his money decree is unenforceable, notwithstanding he was not a party to the complaint in the Circuit Court or the appeal in the Supreme Court and was not represented in said proceeding. As a consequence it has deprived Lewis of his property in his decree for accounting without a hearing, and has denied him due process of law, in violation of the Fourteenth Amendment. *Hansberry* v. *Lee*, 311 U. S. 32, 40; *Garfield* v. *United States*, 211 U. S. 249, 262; *Pennoyer* v. *Neff*, 95 U. S. 714, 733; *Durkin* v. *Hey*, 376 Ill. 292, 300, 33 N. E. (2nd) 463, 466; *Walter Cabinet Co.* v. *Russell*, 250 Ill. 416, 421, 95 N. E. 462, 464.

It will be in the interest of proper administration of justice to grant a writ of certiorari in this case in order to correct a plainly untenable and erroneous decision of the Supreme Court of Illinois based on a misconception of the undisputed facts. A reading of the opinion of the Supreme Court of Illinois on the first appeal in this case (374 Ill. 594), discloses that the Court determined adversely to him all of the rights of this petitioner in his decree for accounting against the Board of Education before he was a party to the litigation. We think the opinion on the first appeal (374 Ill. 594) and on the second appeal (385 Ill. 599) disclose that Lewis is denied relief granted other litigants under like circumstances and with claims substantially like his, because his title to the fund for which the Board was ordered to account by the Circuit Court is evidenced by a contract called a "tax anticipation warrant" instead of by a like contract called by some other name. The federal constitutional rights and privileges of the citizen are not to be denied or impaired by anything so illusory.

All of the elements usually required for the allowance of the writ are present in this case,—(a) substantial claims of

rights under the Constitution of the United States were seasonably made and adequately presented, (b) a decision of the federal constitutional questions presented was necessary to a determination of the rights of petitioner but these questions were not decided by the State Court, and (c) the fair result of the decision and judgment of the State Court is to deny to this petitioner the equal protection of the law and to deprive him of due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

Respectfully submitted,

FLOYD E. THOMPSON,
ALBERT E. JENNER, JR.,
11 South La Salle Street,
Chicago, Illinois,
Attorneys for Petitioner.